IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 370 of 2000
in
SPECIAL CIVIL APPLICATION No 1 of 1985
and
CIVIL APPLICATION NO.6540 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

MANHARLAL HIRALAL PARMAR

Versus

STATE OF GUJARAT

Appearance:
MS SANGITA PAHWA for M/S THAKKAR ASSOC. for Appellant
MS HARSHA DEVANI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 24/07/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

The recruitment was to be held against six posts

of Computers in the Directorate of Health, Medical Services and Medical Education (Health Section). For this purpose, names were requisitioned only from the Employment Exchange and no other notice inviting application was issued in any form. The first list of the candidates was sent to the Department on 20th Jan.1983. On 23rd June 1983, the Department asked the Employment Exchange for sending the names of more candidates, but on 18th July 1983, the Employment Exchange informed the Department that no further list can be sent. In the meanwhile, a second list was received by the Department on 7th July 1983. In this second list dated 7th July 1983, the appellant's name was also there. On that basis, the appellant was called for interview on 3rd August 1983 and he was selected and his name was included in the select list and accordingly, the appellant was given appointment on 12th Aug.1983 in pursuance of which he joined on 24th Aug.1983. This select list had also been sent to the Employment Exchange on 10th Oct.1983. While the appellant was so continuing in service on the basis of the appointment order dated 12th Aug.1983 as Computer, on 1.8.1984, a letter was sent by the Employment Exchange to the department stating therein that no second list as was received by the department on 7.7.83 had been sent by the Employment Exchange to the Department.

On 1.1.1985, the Special Civil Application was filed by the appellant apprehending that his services were likely to be terminated. It appears that ad-interim relief was granted against the termination on 1st Jan.1985 itself while issuing notice. Rule was thereafter issued on 10.1.1986 and the interim relief was ordered to continue. Subsequently, the termination order dated 31st Dec.1984 was produced along with the affidavit-in-reply dated 27th April 1993 filed on behalf of the respondents and it appears from the reading of this order dated 31st Dec.1984 at page 13/L that it was an order of termination simpliciter. However, the respondents have stated in the reply that on 30th Dec.1982, certain vacancies in the cadre of Computer had been notified and the Regional Employment Exchange office was requested to send the names of eligible persons. The Regional Employment Exchange office under letter dated 20th Jan.1983 sent a list of 75 candidates and in addition to this list of 75 candidates, the Department also received a further list of 10 candidates under letter dated 7th July 1983 purporting to have been sent by the Regional Employment Exchange office. In this second list the appellant's name figures at No.9. All these persons i.e. 75 of first list and 10 of second

list were called for interview and six candidates including the present appellant were selected. The list of these six selected candidates was sent to the Employment Exchange office under letter dated 10th Oct.1983. That amongst the said six persons, the first five persons were sponsored through the first list dated 20th Jan.1983 while the present appellant was from the second list dated 7th July 1983. The Employment Exchange office having received the said letter dated 10th Oct.1983 informed the Department that after due investigation, under its letter dated 1.8.1984, it was found that the Employment Exchange had sent only one list of 75 candidates on 20th Jan.1983 and no further list was sent by the said office; that the letter dated 7th July 1983 with the list was forged and whereas the name of the appellant had not been sponsored by the Employment Exchange office, his entry in the service was bad and the respondents found that the appellant could not be continued in service. The correspondence in this regard has been enclosed with the reply. The categorical stand of the respondents in para 5 of the reply is as under:

> "5. I say that the impugned action is not punitive. The petitioner's service is not terminated on account of any misconduct committed by him. The respondents therefore, are not obliged either to hold a regular enquiry in the matter or to hear the petitioner. The impugned order of termination of service is, therefore, legal and valid and does not call for any interference by this Hon'ble Court."

It is also the case of the respondents that the appellant had been appointed by an order dated 12th Aug.1983 and was on probation and at the time of his termination, he was still under probation. The impugned order is in consonance with the terms of his appointment. However, the appointment order in the beginning shows that he was given ad-hoc appointment in Gujarati as Taddan Hangami, but the Condition No.8 of this appointment order shows that it was an appointment on probation for a period of one year.

2. The aforesaid Special Civil Application which was pending since 1985 came to be decided by the learned Single Judge on 30th June 2000 whereby the Special Civil Application was rejected and the interim relief granted on 1.1.85 and continued thereafter which remained operative through out was vacated. But, the fact remains that right from the date of his joining in pursuance of the appointment order dated 12th Aug.1983, i.e. 24th

Aug.1983, the appellant was continued in service throughout for the period of nearly 16 years by the time the petition was decided. Against this judgment and order dated 30th June 2000, the present Letters Patent Appeal was preferred on 2nd Aug.2000, but in the meanwhile, the appellant was relieved from service on 27th July 2000. This Letters Patent Appeal was admitted on 4th Oct.2000 after notice to the respondents.

3. The learned Single Judge has taken the view that it is a fact that no such second list had been sent by the Employment Exchange to the Department and who had sent this forged list is not material, once it was found that the appellant's name had not been sponsored by the Employment Exchange. The appointment given to him on the basis of that list was not correct and as he was appointed as Probationer and was discharged from service, it was a case of termination simpliciter of a probationer or a temporary employment for which no enquiry or notice was required to be given; whereas the order had not been passed by way of penalty and the probationer has no right to continue on the post and his services were liable to be terminated and the order also does not cast any stigma on the appellant. The learned Single Judge has also not agreed to the contention raised before him that whereas the appellant had continued in service for all these years since 1983 to 2000 and from 1.1.85 onwards on the basis of the interim relief granted by this Court, he deserves to be protected at this stage when he had become overage..

4. On behalf of the appellant, the judgment of the learned Single Judge has been assailed on the ground that the Special Civil Application filed by the petitioner (appellant) has been rejected merely because the appellant's name was in the second list disputed to have been sent by the Employment Exchange for which the Employment Exchange has said that no such list had been sent. The aforesaid order passed by the learned Single Judge on 30th June 2000 has also been sought to be assailed by the learned Counsel for the appellant on the ground that, may be that the order on the face of it is innocuous, it is very clear from the reply which had been filed by the State that the foundation and the basic reason for termination was the fact that the second list dated 7th July 1983 had not been sent by the Employment Exchange wherein the appellant's name was included and if that be so, an enquiry was required to be held and an opportunity ought to have been afforded to the appellant so that he could have shown that he was not responsible for the second list which is alleged to be forged. It is

also submitted that there is no dispute that the appellant was duly registered with the Employment Exchange. His registration with the Employment Exchange is not in question and in such circumstances, unless and until it is alleged and proved against him that it was he who was instrumental for the second list which contained the 10 names had been forged and sent at the instance of the appellant, he could not have been subjected to termination by drawing any adverse inference against him merely because he was selected and therefore he was the beneficiary of the second list, when the fact on record is that there were as many as ten names in the second list and the appellant was only one of the ten candidate in the second list.

In our opinion notwithstanding the sponsoring of the names by the Employment Exchange, the appellant had a right to be considered for the said post under Articles 14 and 16 of the Constitution of India being eligible for the same. We are fortified in taking this view by a Supreme Court decision rendered by a Bench of three Judges in the case of Excise Superintendent Malkapatnam V/s K.B.N. Visweshwara Rao, reported in (1996) 6 SCC 216 wherein it has been held as under:-

"6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider

circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

5. The order has been sought to be defended by the learned AGP on the ground that when the order itself was an order simpliciter, there is no question of claiming any inquiry or opportunity and it was certainly a case in which the appointment had been given on the basis of a list which had never been sent by the Employment Exchange and therefore, the respondents were within their rights to terminate the service of the appellant. The contention on behalf of the appellant is that when the Employment Exchange had sent the letter dated 18th July 1983 that no further names could be sent and that was in response to the Department's letter dated 23rd June 1983, the Department ought to have taken caution to act upon the second list dated 7.7.83 while preparing the select list and sending the same to the Employment Exchange on 19th Oct.1983. The learned AGP has pointed out that the action against the inaction on the part of the officer of the Department has already been taken by order dated 27.8.1993 and the concerned employee has been subjected to punishment of deduction of Rs.50/-- per month out of his Pension for a period of one year. On this aspect of the matter in the Letters Patent Appeal, an affidavit-in-reply dated 28th Aug.2000 has been filed to which an affidavit-in-rejoinder has been filed.

6. On behalf of the appellant, learned Counsel has placed reliance on an unreported decision of this Court in Special Civil Application no.9086 of 1992 decided on 28th April 1994 which was made a subject matter of challenge before the Supreme Court and the Supreme Court also declined to interfere and the appeal was dismissed by the Supreme Court with the following order dated 4th Dec.1997:

"ORDER:

We have heard learned counsel for the parties. The learned Judge in the order under appeal has observed as follows:

"In my view the order dated July 4, 1991 terminating the services of the respondent clearly indicated that the

> services of the respondent have been terminated on the ground that the list containing names received by the office of the Forensic Science Laboratory, Ahmedabad, was unauthorised. Without holding any enquiry or recording the conclusions, the order terminating the services of the respondent could not have been passed on that ground. The findings recorded by the Tribunal, more particularly in paragraph 7 of the impugned order, cannot be said to be illegal or erroneous so as to call for interference of the Constitution of India. It is not pointed out to the Court that before coming to the conclusion that the list containing the name of the respondent was unauthorised, any enquiry was conducted by the Deputy Director, F.S.L. Ahmedabad. In the circumstances, the judgment rendered by the Tribunal deserves to be upheld by this Court in the present petition."

In view of the said statement, we do not think that these are fit cases for interference by this Court. The appeals are dismissed with no order as to costs.

Sd/-
(K.Venkataswami, J.)

Sd/-
(B.N. Kirpal, J.)
New Delhi,
December 4, 1997."

The facts of the present case are almost identical to the facts in the above case. Even if the termination order on the face of it is simpliciter in its form, the matter of substance is that the termination order is founded on the ground that the name of the appellant was in the second list alleged to have been sent by Employment Exchange and the Employment Exchange has denied to have sent any such list and the same is said to be a forged list.

7. Having considered the submissions of both the sides, we find that so far as the fact that the appellant was duly registered with the Employment Exchange and that he was eligible for appointment as Computer is not in

dispute between the parties. The only question is that in case the second list had not been sent by the Employment Exchange, could the appellant still have a right of consideration for appointment on the post of Computer? In the cases of recruitment to the various posts under the Government, the basic principle which is applicable is the principle of equality of opportunity in matters of employment as enshrined in Article 16 of the Constitution of India and therefore, all eligible candidates have a right of consideration as has been held by the Apex Court in the case of Excise Superintendent Malkapatnam V/s K.B.N. Visweshwara Rao (Supra). It is a different matter that for the purpose of getting the list of eligible candidates for appointment to different posts and to keep the record of unemployed persons, the Employment Exchange has been entrusted the duty to register the unemployed persons and in certain cases the respective Governments also take recourse to make recruitment only out of the names which are sponsored by the Employment Exchange and in such case, the requirement of issuing a public notice inviting applications for such posts or the advertisement for such posts is dispensed with. Learned AGP has pointed out that in the instant case also, at the relevant time, the instructions were there to consider only such names which are sponsored by the Employment Exchange and therefore, no notice inviting applications was issued for these posts. That may be so, but in our opinion, it cannot be said that the appellant had no right of consideration. Even if such right of consideration is sought to be truncated by the State Government and kept confined only through Employment Exchange, one cannot say that there is an absolute bar and in case any candidate who is not sponsored by the Employment Exchange is considered, the consideration stands vitiated. So far as the allegation that no second list had been sent by the Employment Exchange and in fact the appellant's candidature had been considered only on the basis of the second list which is alleged to be forged, we find that on this aspect of the matter, no inquiry whatsoever has been held. It is only a matter of inference that since the appellant was one of the 10 candidates whose names were there in the select list and he was the beneficiary of this second list, he may have been behind the second list and this second list may have been sent at his instance. While considering this submission, we have also been apprised by the learned AGP that all the 10 candidates had been called for interview. It is a different matter that according to her, other 9 candidates did not appear for interview despite being called and she has further submitted that only the appellant turned up out of 10 candidates for interview

and he was selected and appointed. In any view of the matter, the fact remains that the basis and the foundation of the termination order was that the appellant's name was in the second list and such list was not sent by the Employment Exchange. Exactly similar was the situation in the case of the State of Gujarat v. Sanjaykumar N. Chauhan and ors. etc. etc. (Supra) decided by the Supreme Court, the contents of which have been reproduced hereinabove. In that case also, the termination was brought about on the ground that the list containing the names received by the office of the Forensic Science Laboratory, Ahmedabad was an unauthorised list and the termination had been ordered without holding any inquiry or recording the conclusions. The Supreme Court has considered the statement made in the High Court's order that before coming to the conclusion that the list containing the name of the respondent was unauthorised, no enquiry was conducted by the Deputy Director of F.S.L. Ahmedabad and therefore the judgment of this Court was upheld and the State Appeal was dismissed by the Supreme Court. In this case also, it is the admitted position that the order has been passed without affording any opportunity, without holding any inquiry and without giving any action inspired notice to the present appellant while it is transparently clear that the foundation of the termination order was the inclusion of his name in the second list sent by the Employment Exchange which is alleged to be forged. It is certainly an allegation which may entail a criminal liability and therefore, without holding any inquiry, there was no justification for passing this order.

8. Faced with this situation, learned AGP has submitted before us that even if the termination order is quashed on this ground, the Government should be permitted now to hold an inquiry and in support of her submission, she has cited the decisions in the case of Director General of Police and ors. v. Mrityunjoy Sarkar and ors., reported in 1996 (8) SCC 280 and in the case of Union of India and ors. v. M.Bhaskaran, reported in 1995 Supp. (4) SCC 100. As against this, learned Counsel for the appellant has cited before us the decisions in the case of Union of India and ors. v. I.S. Singh, reported in 1994 Supp. (2) SCC 518 and in the case of State of Madhya Pradesh v. Bani Singh and anr., reported in 1990 Supp. SCC 738. We may straightway observe that if at all the respondents want to hold any inquiry, no permission is required from this Court for this purpose and therefore, there is no question of granting permission for holding an inquiry. It is for the respondents to consider as to whether

holding of an inquiry at this stage can be fruitful for any purpose or it will be an empty formality and futile exercise now after a period of 17 years. The appellant has already continued in service for a period of 17 years by now, may be on the strength of the interim order passed by this Court, but the fact remains that much water has flown at this juncture and nothing prevented the Government if at all they wanted to do so at any stage and now after a lapse of such a long period of 17 years, if an inquiry is permitted to be held, the appellant may also have a grievance to make that after such a long lapse of time and delay of 17 years, no useful purpose will be served by holding inquiry and it will not be possible for him to get the material or evidence in support of his defence, if any. Even otherwise, in the pleadings of the parties, there is no direct allegation against the appellant and even before this Court, that it was at the instance of the appellant that the second list which is alleged to be forged had been got prepared and sent. On the contrary, the categorical stand taken in para 5 of the affidavit-in-reply is that his services have not been terminated on account of misconduct. If the termination is not on account any misconduct, the question of inquiry simply does not arise. If the termination order is founded on misconduct, it ought to have been passed after enquiry. Therefore, there is no question of considering the prayer of the learned AGP for grant of permission to hold the inquiry and we leave it to the wisdom of the authorities themselves as to whether holding of any such inquiry in this case at this stage will be conducive to the ends of justice when the appellant has already become over age and has already remained in service for a period of more than 17 years when nothing has been pointed against his performance during the period of his service throughout uptill now.

9. For the reasons as aforesaid, we find that the termination of the appellant as was brought about by the impugned termination order dated 31st Dec.1984 is not a valid order and the same cannot be sustained. The same is hereby set aside. Accordingly, the order passed by the learned Single Judge rejecting the Special Civil Application is also set aside and we direct that the appellant who was relieved on 27th July 2000 shall be relegated in service with all consequential benefits as if the impugned order of termination had never been passed against him. This Letters Patent Appeal and the Special Civil Application are hereby allowed with no order as to costs.

10. Whereas the main Letters Patent Appeal itself has been decided, no orders are required to be passed in the Civil Application for stay. The Civil Application for stay stands disposed of accordingly.

24th July 2001 (M.R. Calla, J.)

(N.G. Nandi, J.)

Sreeram.